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October 16, 2003

HAND DELIVERED

NOAA Section 525 Officer
NOAA Executive Secretariat
Herbert C. Hoover Building – Room 5230
14th Street and Constitution Avenue, NW
Washington, DC 20230

Mr. Thomas N. Pyke, Jr.
Chief Information Officer,
United States Department of Commerce
Room 5029B
Washington, DC 20230

Re: Request for Correction of Information: Petition to Cease Dissemination of the Biological Reference Points for Northeast Multispecies (New England Groundfish) contained in Draft Multispecies FMP

Dear NOAA Section 525 Officer and Mr. Pyke:

1. Introduction

The Associated Fisheries of Maine, Inc. ("AFM") and the Trawlers Survival Fund ("TSF") seek correction of information, under Section 515 of Public Law 106-554, the Federal Data Quality Act ("FDQA"). These Petitioners respectfully request that the Department of Commerce/National Oceanic and Atmospheric Administration ("NOAA") comply with the FDQA by immediately ceasing dissemination of the "Revised Biological Reference Points for New England Groundfish" incorporated in the Draft Amendment 13 to the Northeast Multispecies Fishery Management Plan (and incorporated Supplemental Draft Environment Impact Statement) ("Draft Amendment 13").

The New England Fishery Management Council ("NEFMC" or "Council"), as statutory advisor and delegee of NOAA Fisheries, published Draft Amendment 13 on August 21, 2003 under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§1851-55. "Multispecies" and "Groundfish" synonymously refer to 19 species of flat and roundfish, such as various flounders, cod, haddock, and other fish

stocks which live and are harvested in association with one another, and are jointly managed under the unitary Northeast Multispecies Fishery Management Plan.

The challenged reference points were developed by the Northeast Fisheries Science Center, Woods Hole, Massachusetts, a sub-unit of NOAA. Amendment 13 constitutes a "Natural Resources Plan" as set forth in NOAA's Information Quality Guidelines, Part II.F. Under Draft Amendment 13, these challenged reference points serve as the goals for federal conservation, management and in certain instances rebuilding of the species contained in the Northeast multispecies complex. More tangibly, Draft Amendment 13 employs these reference points in developing and disseminating proposed fishing restrictions designed to meet species-specific fishing mortality rate targets and other requirements. The reference points contained in Draft Amendment 13 represent a significant departure from the existing management approach. Indeed, chief NOAA Fisheries scientists have publicly termed these new requirements as "*terra incognita*." Draft Amendment 13's goal is to rebuild the groundfish stocks, collectively and individually, to levels that, in many cases, have never been observed.

AFM and TSF are "Affected Persons" as defined in NOAA's Information Quality Guidelines, Part III.A.4. AFM's and TSF's participants include fishing vessel owners, crewmembers, and associated businesses located in shore-side Massachusetts, Rhode Island, and Maine who fish almost exclusively for Northeast Multispecies. The City of Portland, Maine, the second-largest fishing port in New England and Maine's primary groundfish landing port, relies on this groundfish fishery for the majority of fishing-related revenue at its City-owned Fish Pier. For its part, New Bedford, Massachusetts is one of Nation's preeminent fishing ports, ranking as the number-one fishing port by dollar volume in the United States in recent years. The majority of fishing vessels operating in New Bedford Harbor participate in this groundfish fishery.

The White House Office of Management and Budget's ("OMB") Interim Final Guidelines for agency compliance with FDQA requirements (66 F.R. 49718), finalized by OMB's February 22, 2002, Final Guidelines (67 FR 8452), expressly apply "government-wide" (*see* FDQA, Section 515(b)(1)). We bring this proceeding under Commerce's now-final Guidelines, and particularly NOAA's "*Information Quality Guidelines*," to the extent these Guidelines further and are not in conflict with OMB's organic government-wide guidelines and/or the FDQA itself. In the event that NOAA's Information Quality Guidelines conflict with the OMB Guidelines, or the FDQA, these latter, government-wide requirements should control. *See* OMB Information Quality Guidelines, 67 F.R. 8452 (each federal agency to issue directed guidelines and establish administrative mechanism for correction of information that does not comply with OMB government-wide guidelines).

Petitioners also request that you notify us at your earliest convenience of Commerce/NOAA's substantive response to the violations set forth in this series of communications and the docket number assigned.

2. Request For Correction

Petitioners request "correction" under the FDQA of Draft Amendment 13's fundamental data flaws. FDQA prohibits – and therefore, Commerce/NOAA must cease – dissemination of these reference points that underpin the bulk of the management measures proposed in the highly controversial Draft Amendment 13. Specifically, Draft Amendment 13's reference points violate the data quality requirements of "**objectivity**" (whether the disseminated information is presented in an *accurate, clear, complete,* and *unbiased* manner and is as a matter of substance *accurate, reliable,* and *unbiased*), and "**utility**" (the *usefulness* of the information to the *intended users*). NOAA Information Quality Guidelines, Part II.

As a statutorily designated Natural Resource Plan, Draft Amendment 13 qualifies as an "influential document." Therefore, it must meet a "reproducibility standard above and beyond some peer review quality standards." NOAA Information Quality Guidelines, Part II, Objectivity Standards. Natural resource plans will be based on the "best information available" and "will be presented in an accurate, clear, complete and unbiased manner." "Clear distinctions will be drawn between policy choices and the supporting science upon which they are based." "Plans will be reviewed by technically qualified individuals to ensure that they are valid, unbiased, objective, and relevant." NOAA Information Quality Guidelines, Part II.F. The reference points underpin the bulk of the management measures proposed in Draft Amendment 13.

These violations are predicated upon NOAA's inappropriate use of and reliance upon statistical and computer models and data that currently inappropriately represent the size and productivity of the fish stocks that make up the New England multispecies complex. Further, a panel of independent peer reviewers convened by NOAA Fisheries has concluded that alternative statistical and computer modeling approaches both should be considered and also may already place into material doubt the objectivity and utility of the NOAA Fisheries reference points contained in Draft Amendment 13.

This is not an academic exercise. NOAA's use of and reliance on these models and data may have led to erroneous and excessively high biomass rebuilding targets for many of the individual fish stocks that comprise the multispecies complex, leading to the inappropriate, overly restrictive, and admittedly bankrupting management requirements embodied in Draft Amendment 13. Accordingly, the FDQA is violated by continued dissemination of this product by any federal agency.

The FDQA requires "an accurate citation to or description of the particular information disseminated which is the subject of the request, including: the date and source from which the requested obtained the information; the point and form of dissemination; [and] an indication of

which NOAA office or program disseminated the information." NOAA Information Quality Guidelines, Part III.B.3.C. The reference points themselves are contained at Section 3.1.6.2 of Draft Amendment 13, and, as explained above, they form the fundamental basis for most of the management measures contained in Draft Amendment 13.

More generally, Draft Amendment 13 was originally issued in print on August 21, 2003, from the offices of the NEFMC in Newburyport, Massachusetts, and continues to be disseminated by request as well as electronically on the internet at: http://nefmc.org/nemulti/planamen/draft_amend13_aug03_section_1.pdf. The Petitioners obtained their copies of this information from the NEFMC website. That the entirety of the relevant reference points are now effectively located in Draft Amendment 13 provides the requisite "indication of which NOAA office or program disseminated the information; and any other details that will assist NOAA in identifying the specific information which is the subject of the request and locating the responsible office." NOAA Information Quality Guidelines, Part III.B.3.C.

3. Basis for Request for Correction

NOAA's Northeast Fisheries Science Center developed the reference points contained in Draft Amendment 13 in the Spring of 2002. In February of 2003, NOAA convened an independent Groundfish Science Peer Review Committee[1] to, among other things, evaluate these biological reference points and stock rebuilding projections upon which Amendment 13 is being developed and predicated. In the summary report by the Committee chair, Dr. Andrew Payne, the Peer Reviewers recommended that, as to the reference points contained in Draft Amendment 13, "[a]lternative means of modeling [sic] groundfish stock dynamics **should** be evaluated, and their results compared with present procedures, although the currently used ADAPT model is deemed by the reviewers to be scientifically sound." Peer Review Report, p. 4, Summary point 10 (emphasis added). The Peer Reviewers recommended that this work be undertaken and this has not been done.

Furthermore, with respect to the primary VPA/ADAPT models that the Northeast Fisheries Science Center used to evaluate stocks and assess the biological reference points for the non-index based stocks, the Peer Reviewers recommended that differences in results between the ADAPT-VPA approach and the specific age-structured production modeling

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[1] Convened February 3-8, 2003, in Durham, New Hampshire. The reviewers were: Dr. Andrew Payne, (Chair), Centre for Environment, Fisheries and Aquaculture Science, Lowestoft, England; Dr. Ewen Bell, Centre for Environment, Fisheries and Aquaculture Science, Lowestoft, England; Dr. Robin Cook, FRS Marine Laboratory, Aberdeen, Scotland; Dr. Murdoch McAllister, Imperial College, London, England; and Dr. Robert Mohn, Department of Fisheries and Oceans, Halifax, NS, Canada.

("ASPM") approach employed by Dr. Douglas Butterworth[2] and colleagues for the two New England cod stocks be investigated. More specifically, the Peer Review panel observed that, as the two models (ADAPT and ASPM) should yield similar results, "there would definitely be value in investigating the ASPM and ADAPT-based approaches to better understand the differences between them." Peer Review Report at p. 17. "Reasons for differences in the outputs of the different models need to be sought." *Id.* at p. 4.

The age-structured production model approach is in use around the world, including in the Alaska pollock fishery. In addition, we now understand that the Northeast Fisheries Science Center is already employing another variant of that approach as an alternative for certain stocks within its purview (witch flounder and Acadian redfish). We further understand that use of the ASPM approach employed by Dr. Butterworth would allow for the use of more landings and survey data and less extrapolation than the ADAPT-VPA approach in estimating reference points.

The Peer Reviewers' recommendation that such alternative means of statistical modeling be undertaken to assess how robust NOAA Fisheries' conclusions about its ADAPT-VPA- based reference points are in comparison with alternative statistical stock assessment models is especially important, given how influential these reference points will be. *See* NEFSC, *Response to Peer Review Comments*, at 23-24 (appended to Dr. John Boreman's Letter to Thomas Hill, April 4, 2003), *available at*: http://www.nefsc.noaa.gov/groundfish/index.htm. If implemented, the measures contained in Draft Amendment 13 will fundamentally and irretrievably alter and reconfigure New England's historic (since the dawn of colonial days) groundfish fishery.

However, NOAA Fisheries has refused to undertake the comparative analyses recommended by the Peer Reviewers in general, or with respect to ASPM approach in particular. NOAA Fisheries' refusal to undertake this examination in conjunction with the development of Draft Amendment 13 contravenes not only the recommendations of the Groundfish Peer Review, it is in flat opposition to subsequent formal requests by the New England Fishery Management Council. The Council first made that request at its April 15,

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[2] Dr. Butterworth performed the analyses under the ASPM approach for the two cod stocks as an illustration of that model's potential utility. Dr. Butterworth focused on the two cod stocks (among the many in the multispecies complex) because of the limited time (less than a month) between NOAA's announcement of a Peer Review and the deadline for submissions to that body. Dr. Butterworth, a professor in the Department of Mathematics and Applied Mathematics, University of Cape Town, South Africa, is an expert in the modeling and assessment of fish stock populations. He has been invited, in his personal capacity, to serve on scientific committees of many international bodies involved in the management of renewable marine resources, including CCAMLR, CCSBT, CITES, FAO, ICES, ICSEAF, IWC and NAMMCO, as well to provide scientific advice to fishing industry organizations and government agencies responsible for fisheries management in over a dozen countries.

2003, meeting. Further, on May 20, 2003, the NEFMC passed another motion on the subject, this time requesting that Dr. William Hogarth, the Assistant Administrator for Fisheries for NMFS, direct NOAA Fisheries' Northeast Fisheries Science Center to examine the ASPM approach at least for the New England cod and haddock stocks.

In addition, NMFS has not met in substance many of the other scientific criticisms raised by the Peer Review Panel. *See, e.g.,* NEFSC, *Response to Peer Review Comments*, at 16-18 (refusing to investigate the feasibility of reaching biomass targets for all 19 species simultaneously as requested by the Panel).

4. Conclusion

Failure to follow the guidance of the Independent Peer Review and the Council regarding further investigation into use of the ADAPT-VPA and alternative models to develop reference points for Draft Amendment 13 violated the "objectivity" and "utility" requirements of the FDQA. Also, as "influential information," the biological reference points contained in Amendment 13 also fails the standards, setting forth the "highest level of transparency" regarding data and methods of analysis. NOAA Information Quality Guidelines, Part II, Objectivity Standards. For the foregoing reasons, Amendment 13's revised biological reference points fail to meet the FDQA, as well as and/or OMB and Commerce/NOAA Guidelines regarding data quality. *See* OMB Government-wide Information Quality Guidelines. As a consequence **Commerce/NOAA must immediately cease electronic and other dissemination of the unacceptable data provided by NMFS, as defined by OMB, and now Commerce and NOAA, and described above.**

Respectfully submitted,
Brand & Frulla, P.C.

David E. Frulla
Shaun M. Gehan
Andrew D. Herman

Counsel for Associated Fisheries of Maine
and the Trawlers Survival Fund

DEF/SMG:mlc

cc: William T. Hogarth, Ph.D (via hand delivery)
Mr. David Borden, Chair, NEFMC